

Eyewitness Identification

607.1 PURPOSE AND SCOPE

This policy sets forth guidelines to be used when members of this department employ eyewitness identification techniques (Penal Code § 859.7).

607.1.1 DEFINITIONS

Definitions related to the policy include:

Eyewitness identification process -Any field identification, live lineup or photographic identification.

Field identification -A live presentation of a single individual to a witness following the commission of a criminal offense for the purpose of identifying or eliminating the person as the suspect.

Live lineup - A live presentation of individuals to a witness for the purpose of identifying or eliminating an individual as the suspect.

Photographic lineup - Presentation of photographs to a witness for the purpose of identifying or eliminating an individual as the suspect.

607.2 POLICY

The Shasta County Sheriff's Office will strive to use eyewitness identification techniques, when appropriate, to enhance the investigative process and will emphasize identifying persons responsible for crime and exonerating the innocent.

607.3 INTERPRETIVE SERVICES

Deputies should make a reasonable effort to arrange for an interpreter before proceeding with eyewitness identification if communication with a witness is impeded due to language or hearing barriers.

Before the interpreter is permitted to discuss any matter with the witness, the investigating deputy should explain the identification process to the interpreter. Once it is determined that the interpreter comprehends the process and can explain it to the witness, the eyewitness identification may proceed as provided for within this policy.

607.4 EYEWITNESS IDENTIFICATION PROCESS AND FORM

The Major Crimes Unit supervisor shall be responsible for the development and maintenance of an eyewitness identification process for use by members when they are conducting eyewitness identifications.

The process should include appropriate forms or reports that provide (Penal Code § 859.7):

- (a) The date, time and location of the eyewitness identification procedure.
- (b) The name and identifying information of the witness.

Shasta County Sheriff's Office

Shasta County SD Policy Manual

Eyewitness Identification

- (c) The name of the person administering the identification procedure.
- (d) If applicable, the names of all of the individuals present during the identification procedure.
- (e) An instruction to the witness that it is as important to exclude innocent persons as it is to identify a perpetrator.
- (f) An instruction to the witness that the perpetrator may or may not be among those presented and that the witness is not obligated to make an identification.
- (g) If the identification process is a photographic or live lineup, an instruction to the witness that the perpetrator may not appear exactly as he/she did on the date of the incident.
- (h) An instruction to the witness that the investigation will continue regardless of whether an identification is made by the witness.
- (i) A signature line where the witness acknowledges that he/she understands the identification procedures and instructions.
- (j) A statement from the witness in the witness's own words describing how certain he/she is of the identification or non-identification. This statement should be taken at the time of the identification procedure.
- (k) Any other direction to meet the requirements of Penal Code § 859.7, including direction regarding blind or blinded administrations and filler selection.

The process and related forms should be reviewed at least annually and modified when necessary.

607.5 EYEWITNESS IDENTIFICATION

Members are cautioned not to, in any way, influence a witness as to whether any subject or photo presented in a lineup is in any way connected to the case.

Members should avoid mentioning that:

- The individual was apprehended near the crime scene.
- The evidence points to the individual as the suspect.
- Other witnesses have identified or failed to identify the individual as the suspect.

An eyewitness shall be instructed to the following prior to any identification procedure:

- The suspect may or may not be among the persons in the identification procedure.
- The eyewitness should not feel compelled to make an identification.
- An identification or failure to make an identification will not end the investigation.

In order to avoid undue influence, witnesses should view suspects or a lineup individually and outside the presence of other witnesses. Witnesses should be instructed to avoid discussing details of the incident or of the identification process with other witnesses. Prior to conducting the identification procedure, and as close to the incident as possible, the eyewitness shall provide the description of the suspect of the offense.

Eyewitness Identification

Whenever feasible, the eyewitness identification procedure should be audio and video recorded and the recording should be retained according to current evidence procedures (Penal Code § 859.7).

607.5.1 PHOTOGRAPHIC LINEUP AND LIVE LINEUP CONSIDERATIONS

When practicable, the person composing the lineup and the person presenting the lineup should not be directly involved in the investigation of the case. When this is not possible, the member presenting the lineup must take the utmost care not to communicate the identity of the suspect in any way. The person conducting the identification procedure shall use blind administration or blinded administration during the identification procedure.

When practicable, the employee presenting a lineup to a witness should not know which photograph or person is the suspect.

An identification procedure shall be composed so that the fillers generally fit the eyewitness' description of the suspect. In the case of a photo lineup, the photograph of the person suspected as being responsible of the crime should, if practicable, resemble his or her appearance at the time of the offense and not unduly stand out.

In cases involving multiple suspects, only one suspected perpetrator shall be included in any identification procedure. A separate lineup should be conducted for each suspect. The suspects should be placed in a different order within each lineup.

The employee presenting the lineup to a witness should do so sequentially and not simultaneously (i.e., show the witness one person at a time). The witness should view all persons in the lineup.

The order of the suspect or the photos and fillers should be randomized before being presented to each witness.

In a photo lineup, writings or information concerning any previous arrest of the person suspected as the perpetrator shall not be visible to the eyewitness. All eyewitnesses shall be separated when viewing an identification procedure. Nothing shall be said to the eyewitness that might influence the eyewitness' identification of the person suspected as the perpetrator.

If the eyewitness identifies a person he or she believes to be the perpetrator, all of the following shall apply:

- The deputy shall immediately inquire as to the eyewitness' confidence level in the accuracy of the identification and record in writing, verbatim, what the eyewitness says.
- Information concerning the identified person shall not be given to the eyewitness prior to obtaining the eyewitness' statement of confidence level and documenting the exact words of the eyewitness.
- The deputy shall not validate or invalidate the eyewitness' identification.

An electronic recording shall be made that includes both audio and visual representation of the identification procedures. Whether it is feasible to make a recording with both audio and visual representations shall be determined on a case by case basis. When it is not feasible to make a

Eyewitness Identification

recording with both audio and visual representations, audio recordings may be used. When audio recording without video representation is used, the deputy shall state, in writing, the reason that video representation was not feasible.

A live lineup should only be used before criminal proceedings have been initiated against the suspect. If there is any question as to whether any criminal proceedings have begun, the investigating deputy should contact the appropriate prosecuting attorney before proceeding.

607.5.2 FIELD IDENTIFICATION CONSIDERATIONS

Field identifications, also known as field elimination show-ups or one-on-one identifications, may be helpful in certain cases, where exigent circumstances make it impracticable to conduct a photo or live lineup identifications. A field elimination or show-up identification should not be used when independent probable cause exists to arrest a suspect. In such cases a live or photo lineup is the preferred course of action if eyewitness identification is contemplated.

When initiating a field identification, the deputy should observe the following guidelines:

- (a) Obtain a complete description of the suspect from the witness.
- (b) Assess whether a witness should be included in a field identification process by considering:
 - 1. The length of time the witness observed the suspect.
 - 2. The distance between the witness and the suspect.
 - 3. Whether the witness could view the suspect's face.
 - 4. The quality of the lighting when the suspect was observed by the witness.
 - 5. Whether there were distracting noises or activity during the observation.
 - 6. Any other circumstances affecting the witness's opportunity to observe the suspect.
 - 7. The length of time that has elapsed since the witness observed the suspect.
- (c) If safe and practicable, the person who is the subject of the show-up should not be handcuffed or in a patrol vehicle.
- (d) When feasible, deputies should bring the witness to the location of the suspect, rather than bring the suspect to the witness.
- (e) A person should not be shown to the same witness more than once.
- (f) In cases involving multiple suspects, witnesses should only be permitted to view the suspects one at a time.
- (g) A person in a field identification should not be required to put on clothing worn by the suspect, to speak words uttered by the suspect or to perform other actions mimicking those of the suspect.

Shasta County Sheriff's Office

Shasta County SD Policy Manual

Eyewitness Identification

- (h) If a witness positively identifies an individual as the perpetrator, deputies should not conduct any further field identifications with other witnesses for that suspect. In such instances deputies should document the contact information for any additional witnesses for follow up, if necessary.

607.6 DOCUMENTATION

A thorough description of the eyewitness process and the result of any eyewitness identification should be documented in the case report.

If a photographic lineup is utilized, a copy of the photographic lineup presented to the witness should be included in the case report. In addition, the order in which the photographs were presented to the witness should be documented in the case report.

607.6.1 DOCUMENTATION RELATED TO RECORDINGS

The handling member shall document the reason that a video recording or any other recording of an identification was not obtained (Penal Code § 859.7).

607.6.2 DOCUMENTATION RELATED TO BLIND ADMINISTRATION

If a presentation of a lineup is not conducted using blind administration, the handling member shall document the reason (Penal Code § 859.7).